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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/796,534	03/09/2004	Frank M. Keese	025948-0158	2016
26371	7590	01/05/2006	EXAMINER	
FOLEY & LARDNER LLP 777 EAST WISCONSIN AVENUE SUITE 3800 MILWAUKEE, WI 53202-5308			LONEY, DONALD J	
			ART UNIT	PAPER NUMBER
			1772	

DATE MAILED: 01/05/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/796,534

Applicant(s)

KEESE ET AL.

Examiner

Donald Loney

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 October 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 102, 104, 105 and 108-135 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 102, 104, 105 and 108-135 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

3. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

4. Claims 102, 104, 105 and 108-135 are rejected under 35 U.S.C. 103(a) as being unpatentable over either Henderson et al (4261257) or Miller (4530276) in view of

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Stanger et al (5931083), Ledet et al (5410951) and the applicant's discussion of the prior art.

Both of the primary references teach an apparatus that contains a belt wherein food products contact the first side of the belt and a heating element contacts the other side of the food product to toast it on this side. The food slides along the heating element per claim 128. They are vertical toasters per claims 118, 122 and 130. Refer to figure 2 in Henderson et al showing the belt(s) 19, 20, heating element 11, 12 and food, which is, toasted on sides 62 and 63 by the heating element. Refer to figure 2 in Miller showing a similar arrangement. The primary references do fail to teach a belt comprising a fabric with a coating thereon with flights on one side thereof (instant claims 121 and 128) or on both sides thereof (instant claims 102, 124 and 129).

The secondary references teach to from flights on one side of the belt, or both sides of the belt. Stanger et al teaches a belt used in a high temperature apparatus that contains flights 209 on one side thereof. The belt is made of the materials recited by the applicant. Stanger et al does fail to teach the flights on both sides of the belt. Refer to figure 14 along with column 7, line 23 through column 8, line 31. Both Ledet et al and the applicant's discussion disclose it is known to form belts with flights on both sides thereof in order to prevent slipping. Refer to flights 21 and 122 in Ledet et al. Refer to the Background section of the applicant's specification.

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to the primary references to use a belt with flights on both sides of the belt, as taught by the secondary references, for the purpose of

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providing both sides with gripping means motivated by the fact that belts are typically driven by a sprocket type wheel and contact a food item to be cooked. This would involve only a substitution of one belt for another (i.e. belt with flights for the chain link belt taught in the primary references), which would be obvious to one of ordinary skill in the art, motivated by the fact the secondary references teach it is known to use belts with flights in a cooking apparatus. The applicant discusses, in the Background section, that belts with flights are known but have not been used in a food cooking apparatus. Both Stanger et al and Ledet et al teach to include flights on belts used in cooking apparatuses. The limitations as to the height and pattern of the flights is deemed obvious to a skilled artisan since Stanger et al teaches that the ribs can be in any shape pattern or arrangement (see column 8, lines 13-20).

Response to Arguments

5. Applicant's arguments with respect to claims 102, 104, 105 and 108-135 have been considered but are moot in view of the new ground(s) of rejection.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Donald Loney whose telephone number is (571) 272-1493. The examiner can normally be reached on Mon, Tues, Thurs and Fri. 8AM-4PM, flex schedule.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon can be reached on 571 272-1498. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Donald Loney
Primary Examiner
Art Unit 1772

DJL:D.Loney
01/03/06